

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 22, 2003

AMENDED IN SENATE JUNE 16, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1031

Introduced by Assembly Member Correa

February 20, 2003

An act to amend Sections 25102, 25212, 25230, 25232, 25241, 25247, 25252, 25532, 25540, 25541, and 25612.5 of, and to add Sections 25256, 25404, and 25612.3 to, the Corporations Code, and to amend Sections 12221, 17209.3, 22109, and 23001 of, and to add Sections 12307.5, 17424, and 22705.1 to, the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1031, as amended, Correa. Financial institutions.

(1) Existing law, the Corporate Securities Law of 1968, provides for the licensing of agents and broker-dealers and the registration of investment advisers and investment adviser representatives by the Department of Corporations, subject to certain exceptions. Existing law authorizes the Commissioner of Corporations to take disciplinary action against the certificate of, or deny a certificate to, a broker-dealer or an investment adviser for specified acts, including a willful violation of certain provisions relating to securities, investments, commodities, and franchises.

This bill would authorize disciplinary action against the certificate of a broker-dealer or investment adviser for the violation of other statutes and rules related to broker-dealers and investment advisers, and the denial of a certificate to an applicant for a violation of similar state or foreign regulatory provisions. The bill would also authorize the commissioner to review the disciplinary history of an investment adviser representative upon the filing of a notice of employment, association, or transfer, an amendment of that notice, or a termination of employment or association.

Existing law requires that, upon the request of the commissioner, a broker-dealer or investment adviser furnish an authorization for disclosure of financial records of the business.

This bill would require a broker-dealer or investment adviser, and an applicant for licensure as a broker-dealer or investment adviser, to provide the authorization for disclosure.

Existing law requires the commissioner to make certain information concerning investment advisers in the possession of the commissioner available to the public on request.

This bill would limit this information to information subject to disclosure under the California Public Records Act or the Information Practices Act of 1977, and would exempt specified criminal history record information.

The bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to broker-dealer or investment advisers grounds for disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events in the record.

(2) Existing law authorizes certain fines and penalties relative to willful violations of the Corporate Securities Act of 1968.

This bill would increase those fines and penalties for issuers of securities who violate certain provisions of that law.

This bill would make it unlawful to intentionally impede, obstruct, or influence the administration or enforcement of the Corporate Securities Act of 1968.

This bill would require the commissioner to use specified forms in regulating broker-dealers and investment advisers.

Existing law authorizes the commissioner to cooperate with other securities agencies, and to take specified acts for this purpose.



This bill would also authorize the department to cooperate in any regulatory activity necessary in the administration of the USA Patriot Act of 2001.

Existing law requires certain securities offered or sold in this state to be qualified or exempted, and provides that an application for qualification, an amendment to an application, or a related securities document or record filed in this state by means of an electronic technology is deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

This bill would expand this provision to apply to other documents and records.

(3) Existing law, the Check Seller, Bill Payer, and Proraters Law, the violation of which is a misdemeanor, prohibits a person from engaging in the business of check selling, bill paying, or prorating without being licensed by the Commissioner of Financial Institutions.

Existing law authorizes the commissioner to deny a license under certain conditions, including if the applicant or any officer, director, or member of the applicant has violated a provision of the law or rules thereunder, or similar regulatory scheme of a foreign jurisdiction.

This bill would make a violation by a general partner or person owning or controlling, directly or indirectly, 10% or more of the outstanding interests or equity securities subject to the denial of licensure. The bill would also include a violation of a related regulatory scheme of California as a ground for denial of a license.

This bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to check sellers and proraters, grounds for a disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events therein.

(4) Existing law, the Escrow Law, prohibits a person from engaging in business as an escrow agent except as a corporation licensed by the Commissioner of Financial Institutions as an escrow agent. Existing law authorizes the commissioner to deny a license under certain conditions.

This bill would make a violation of the Escrow Law, related rules, or a similar regulatory scheme of a foreign jurisdiction by a general partner or person owning or controlling, directly or indirectly, 10% or more of the outstanding interests or equity securities subject to the denial of



licensure. The bill would also make a violation of a related regulatory scheme of California as a ground for denial of a license.

This bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to escrow agents, grounds for a disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events therein.

(5) Existing law, the Finance Lenders Law, prohibits a person from engaging in the business of a finance lender or broker without a license from the Commissioner of Financial Institutions. Existing law provides that the commissioner may deny an application for a license for specified reasons, including that the applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10% or more of the outstanding interests or equity securities of the applicant has violated that law, related rules and regulations, or the similar regulatory scheme of a foreign jurisdiction.

This bill would include a violation of a similar regulatory scheme of the State of California as a ground for denial of a license. The bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to the practice of finance lenders or brokers, grounds for a disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events therein.

(6) Existing law, the California Deferred Deposit Transaction Law, which except for specified provisions becomes operative March 1, 2004, authorizes regulation of persons engaged in the business of making or negotiating deferred deposit transactions and provides for the licensing of those persons by the Commissioner of Corporations. Existing law exempts certain financial entities from the definition of a licensee.

This bill would also exempt credit unions from the definition of a licensee.

(7) Because this bill would create new crimes, it would impose a state-mandated local program.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

(9) *This bill would incorporate additional changes in Section 17209.3 of the Financial Code, contingent upon the prior enactment of AB 479.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25102 of the Corporations Code is
2 amended to read:

3 25102. The following transactions are exempted from the
4 provisions of Section 25110:

5 (a) Any offer (but not a sale) not involving any public offering
6 and the execution and delivery of any agreement for the sale of
7 securities pursuant to the offer if (1) the agreement contains
8 substantially the following provision: “The sale of the securities
9 that are the subject of this agreement has not been qualified with
10 the Commissioner of Corporations of the State of California and
11 the issuance of the securities or the payment or receipt of any part
12 of the consideration therefor prior to the qualification is unlawful,
13 unless the sale of securities is exempt from the qualification by
14 Section 25100, 25102, or 25105 of the California Corporations
15 Code. The rights of all parties to this agreement are expressly
16 conditioned upon the qualification being obtained, unless the sale
17 is so exempt”; and (2) no part of the purchase price is paid or
18 received and none of the securities are issued until the sale of the
19 securities is qualified under this law unless the sale of securities is
20 exempt from the qualification by this section, Section 25100, or
21 25105.

22 (b) Any offer (but not a sale) of a security for which a
23 registration statement has been filed under the Securities Act of
24 1933 but has not yet become effective, or for which an offering
25 statement under Regulation A has been filed but has not yet been
26 qualified, if no stop order or refusal order is in effect and no public
27 proceeding or examination looking towards an order is pending
28 under Section 8 of the act and no order under Section 25140 or
29 subdivision (a) of Section 25143 is in effect under this law.

1 (c) Any offer (but not a sale) and the execution and delivery of
2 any agreement for the sale of securities pursuant to the offer as may
3 be permitted by the commissioner upon application. Any
4 negotiating permit under this subdivision shall be conditioned to
5 the effect that none of the securities may be issued and none of the
6 consideration therefor may be received or accepted until the sale
7 of the securities is qualified under this law.

8 (d) Any transaction or agreement between the issuer and an
9 underwriter or among underwriters if the sale of the securities is
10 qualified, or exempt from qualification, at the time of distribution
11 thereof in this state, if any.

12 (e) Any offer or sale of any evidence of indebtedness, whether
13 secured or unsecured, and any guarantee thereof, in a transaction
14 not involving any public offering.

15 (f) Any offer or sale of any security in a transaction (other than
16 an offer or sale to a pension or profit-sharing trust of the issuer) that
17 meets each of the following criteria:

18 (1) Sales of the security are not made to more than 35 persons,
19 including persons not in this state.

20 (2) All purchasers either have a preexisting personal or
21 business relationship with the offeror or any of its partners,
22 officers, directors or controlling persons, or managers (as
23 appointed or elected by the members) if the offeror is a limited
24 liability company, or by reason of their business or financial
25 experience or the business or financial experience of their
26 professional advisers who are unaffiliated with and who are not
27 compensated by the issuer or any affiliate or selling agent of the
28 issuer, directly or indirectly, could be reasonably assumed to have
29 the capacity to protect their own interests in connection with the
30 transaction.

31 (3) Each purchaser represents that the purchaser is purchasing
32 for the purchaser's own account (or a trust account if the purchaser
33 is a trustee) and not with a view to or for sale in connection with
34 any distribution of the security.

35 (4) The offer and sale of the security is not accomplished by the
36 publication of any advertisement. The number of purchasers
37 referred to above is exclusive of any described in subdivision (i),
38 any officer, director, or affiliate of the issuer, or manager (as
39 appointed or elected by the members) if the issuer is a limited
40 liability company, and any other purchaser who the commissioner

1 designates by rule. For purposes of this section, a husband and wife
2 (together with any custodian or trustee acting for the account of
3 their minor children) are counted as one person and a partnership,
4 corporation, or other organization that was not specifically formed
5 for the purpose of purchasing the security offered in reliance upon
6 this exemption, is counted as one person. The commissioner may
7 by rule require the issuer to file a notice of transactions under this
8 subdivision.

9 The failure to file the notice or the failure to file the notice within
10 the time specified by the rule of the commissioner shall not affect
11 the availability of this exemption. An issuer who fails to file the
12 notice as provided by rule of the commissioner shall, within 15
13 business days after discovery of the failure to file the notice or after
14 demand by the commissioner, whichever occurs first, file the
15 notice and pay to the commissioner a fee equal to the fee payable
16 had the transaction been qualified under Section 25110.

17 (g) Any offer or sale of conditional sale agreements, equipment
18 trust certificates, or certificates of interest or participation therein
19 or partial assignments thereof, covering the purchase of railroad
20 rolling stock or equipment or the purchase of motor vehicles,
21 aircraft, or parts thereof, in a transaction not involving any public
22 offering.

23 (h) Any offer or sale of voting common stock by a corporation
24 incorporated in any state if, immediately after the proposed sale
25 and issuance, there will be only one class of stock of the
26 corporation outstanding that is owned beneficially by no more
27 than 35 persons, provided all of the following requirements have
28 been met:

29 (1) The offer and sale of the stock is not accompanied by the
30 publication of any advertisement, and no selling expenses have
31 been given, paid, or incurred in connection therewith.

32 (2) The consideration to be received by the issuer for the stock
33 to be issued consists of any of the following:

34 (A) Only assets (which may include cash) of an existing
35 business enterprise transferred to the issuer upon its initial
36 organization, of which all of the persons who are to receive the
37 stock to be issued pursuant to this exemption were owners during,
38 and the enterprise was operated for, a period of not less than one
39 year immediately preceding the proposed issuance, and the
40 ownership of the enterprise immediately prior to the proposed

1 issuance was in the same proportions as the shares of stock are to
2 be issued.

3 (B) Only cash or cancellation of indebtedness for money
4 borrowed, or both, upon the initial organization of the issuer,
5 provided all of the stock is issued for the same price per share.

6 (C) Only cash, provided the sale is approved in writing by each
7 of the existing shareholders and the purchaser or purchasers are
8 existing shareholders.

9 (D) In a case where after the proposed issuance there will be
10 only one owner of the stock of the issuer, only any legal
11 consideration.

12 (3) No promotional consideration has been given, paid, or
13 incurred in connection with the issuance. Promotional
14 consideration means any consideration paid directly or indirectly
15 to a person who, acting alone or in conjunction with one or more
16 other persons, takes the initiative in founding and organizing the
17 business or enterprise of an issuer for services rendered in
18 connection with the founding or organizing.

19 (4) A notice in a form prescribed by rule of the commissioner,
20 signed by an active member of the State Bar of California, is filed
21 with or mailed for filing to the commissioner not later than 10
22 business days after receipt of consideration for the securities by the
23 issuer. That notice shall contain an opinion of the member of the
24 State Bar of California that the exemption provided by this
25 subdivision is available for the offer and sale of the securities. The
26 failure to file the notice as required by this subdivision and the
27 rules of the commissioner shall not affect the availability of this
28 exemption. An issuer who fails to file the notice within the time
29 specified by this subdivision shall, within 15 business days after
30 discovery of the failure to file the notice or after demand by the
31 commissioner, whichever occurs first, file the notice and pay to the
32 commissioner a fee equal to the fee payable had the transaction
33 been qualified under Section 25110. The notice, except when filed
34 on behalf of a California corporation, shall be accompanied by an
35 irrevocable consent, in the form that the commissioner by rule
36 prescribes, appointing the commissioner or his or her successor in
37 office to be the issuer's attorney to receive service of any lawful
38 process in any noncriminal suit, action, or proceeding against it or
39 its successor that arises under this law or any rule or order
40 hereunder after the consent has been filed, with the same force and



1 validity as if served personally on the issuer. An issuer on whose
2 behalf a consent has been filed in connection with a previous
3 qualification or exemption from qualification under this law (or
4 application for a permit under any prior law if the application or
5 notice under this law states that the consent is still effective) need
6 not file another. Service may be made by leaving a copy of the
7 process in the office of the commissioner, but it is not effective
8 unless (A) the plaintiff, who may be the commissioner in a suit,
9 action, or proceeding instituted by him or her, forthwith sends
10 notice of the service and a copy of the process by registered or
11 certified mail to the defendant or respondent at its last address on
12 file with the commissioner, and (B) the plaintiff's affidavit of
13 compliance with this section is filed in the case on or before the
14 return day of the process, if any, or within the further time as the
15 court allows.

16 (5) Each purchaser represents that the purchaser is purchasing
17 for the purchaser's own account, or a trust account if the purchaser
18 is a trustee, and not with a view to or for sale in connection with
19 any distribution of the stock.

20 For the purposes of this subdivision, all securities held by a
21 husband and wife, whether or not jointly, shall be considered to be
22 owned by one person, and all securities held by a corporation that
23 has issued stock pursuant to this exemption shall be considered to
24 be held by the shareholders to whom it has issued the stock.

25 All stock issued by a corporation pursuant to this subdivision as
26 it existed prior to the effective date of the amendments to this
27 section made during the 1996 portion of the 1995–96 Regular
28 Session that required the issuer to have stamped or printed
29 prominently on the face of the stock certificate a legend in a form
30 prescribed by rule of the commissioner restricting transfer of the
31 stock in a manner provided for by that rule shall not be subject to
32 the transfer restriction legend requirement and, by operation of
33 law, the corporation is authorized to remove that transfer
34 restriction legend from the certificates of those shares of stock
35 issued by the corporation pursuant to this subdivision as it existed
36 prior to the effective date of the amendments to this section made
37 during the 1996 portion of the 1995–96 Regular Session.

38 (i) Any offer or sale (1) to a bank, savings and loan association,
39 trust company, insurance company, investment company
40 registered under the Investment Company Act of 1940, pension or

1 profit-sharing trust (other than a pension or profit-sharing trust of
2 the issuer, a self-employed individual retirement plan, or
3 individual retirement account), or other institutional investor or
4 governmental agency or instrumentality that the commissioner
5 may designate by rule, whether the purchaser is acting for itself or
6 as trustee, or (2) to any corporation with outstanding securities
7 registered under Section 12 of the Securities Exchange Act of 1934
8 or any wholly owned subsidiary of the corporation that after the
9 offer and sale will own directly or indirectly 100 percent of the
10 outstanding capital stock of the issuer, provided the purchaser
11 represents that it is purchasing for its own account (or for the trust
12 account) for investment and not with a view to or for sale in
13 connection with any distribution of the security.

14 (j) Any offer or sale of any certificate of interest or
15 participation in an oil or gas title or lease (including subsurface gas
16 storage and payments out of production) if either of the following
17 apply:

18 (1) All of the purchasers meet one of the following
19 requirements:

20 (A) Are and have been during the preceding two years engaged
21 primarily in the business of drilling for, producing, or refining oil
22 or gas (or whose corporate predecessor, in the case of a
23 corporation, has been so engaged).

24 (B) Are persons described in paragraph (1) of subdivision (i).

25 (C) Have been found by the commissioner upon written
26 application to be substantially engaged in the business of drilling
27 for, producing, or refining oil or gas so as not to require the
28 protection provided by this law (which finding shall be effective
29 until rescinded).

30 (2) The security is concurrently hypothecated to a bank in the
31 ordinary course of business to secure a loan made by the bank,
32 provided that each purchaser represents that it is purchasing for its
33 own account for investment and not with a view to or for sale in
34 connection with any distribution of the security.

35 (k) Any offer or sale of any security under, or pursuant to, a plan
36 of reorganization under Chapter 11 of the federal bankruptcy law
37 that has been confirmed or is subject to confirmation by the decree
38 or order of a court of competent jurisdiction.

39 (l) Any offer or sale of an option, warrant, put, call, or straddle,
40 and any guarantee of any of these securities, by a person who is not

1 the issuer of the security subject to the right, if the transaction, had
2 it involved an offer or sale of the security subject to the right by the
3 person, would not have violated Section 25110 or 25130.

4 (m) Any offer or sale of a stock to a pension, profit-sharing,
5 stock bonus, or employee stock ownership plan, provided that (1)
6 the plan meets the requirements for qualification under Section
7 401 of the Internal Revenue Code, and (2) the employees are not
8 required or permitted individually to make any contributions to the
9 plan. The exemption provided by this subdivision shall not be
10 affected by whether the stock is contributed to the plan, purchased
11 from the issuer with contributions by the issuer or an affiliate of
12 the issuer, or purchased from the issuer with funds borrowed from
13 the issuer, an affiliate of the issuer, or any other lender.

14 (n) Any offer or sale of any security in a transaction, other than
15 an offer or sale of a security in a rollup transaction, that meets all
16 of the following criteria:

17 (1) The issuer is (A) a California corporation or foreign
18 corporation that, at the time of the filing of the notice required
19 under this subdivision, is subject to Section 2115, or (B) any other
20 form of business entity, including without limitation a partnership
21 or trust organized under the laws of this state. The exemption
22 provided by this subdivision is not available to a “blind pool”
23 issuer, as that term is defined by the commissioner, or to an
24 investment company subject to the Investment Company Act of
25 1940.

26 (2) Sales of securities are made only to qualified purchasers or
27 other persons the issuer reasonably believes, after reasonable
28 inquiry, to be qualified purchasers. A corporation, partnership, or
29 other organization specifically formed for the purpose of acquiring
30 the securities offered by the issuer in reliance upon this exemption
31 may be a qualified purchaser if each of the equity owners of the
32 corporation, partnership, or other organization is a qualified
33 purchaser. Qualified purchasers include the following:

34 (A) A person designated in Section 260.102.13 of Title 10 of
35 the California Code of Regulations.

36 (B) A person designated in subdivision (i) or any rule of the
37 commissioner adopted thereunder.

38 (C) A pension or profit-sharing trust of the issuer, a
39 self-employed individual retirement plan, or an individual
40 retirement account, if the investment decisions made on behalf of

1 the trust, plan, or account are made solely by persons who are
2 qualified purchasers.

3 (D) An organization described in Section 501(c)(3) of the
4 Internal Revenue Code, corporation, Massachusetts or similar
5 business trust, or partnership, each with total assets in excess of
6 five million dollars (\$5,000,000) according to its most recent
7 audited financial statements.

8 (E) With respect to the offer and sale of one class of voting
9 common stock of an issuer or of preferred stock of an issuer
10 entitling the holder thereof to at least the same voting rights as the
11 issuer's one class of voting common stock, provided that the issuer
12 has only one-class voting common stock outstanding upon
13 consummation of the offer and sale, a natural person who, either
14 individually or jointly with the person's spouse, (i) has a minimum
15 net worth of two hundred fifty thousand dollars (\$250,000) and
16 had, during the immediately preceding tax year, gross income in
17 excess of one hundred thousand dollars (\$100,000) and reasonably
18 expects gross income in excess of one hundred thousand dollars
19 (\$100,000) during the current tax year or (ii) has a minimum net
20 worth of five hundred thousand dollars (\$500,000). "Net worth"
21 shall be determined exclusive of home, home furnishings, and
22 automobiles. Other assets included in the computation of net worth
23 may be valued at fair market value.

24 Each natural person specified above, by reason of his or her
25 business or financial experience, or the business or financial
26 experience of his or her professional adviser, who is unaffiliated
27 with and who is not compensated, directly or indirectly, by the
28 issuer or any affiliate or selling agent of the issuer, can be
29 reasonably assumed to have the capacity to protect his or her
30 interests in connection with the transaction. The amount of the
31 investment of each natural person shall not exceed 10 percent of
32 the net worth, as determined by this subparagraph, of that natural
33 person.

34 (F) Any other purchaser designated as qualified by rule of the
35 commissioner.

36 (3) Each purchaser represents that the purchaser is purchasing
37 for the purchaser's own account (or trust account, if the purchaser
38 is a trustee) and not with a view to or for sale in connection with
39 a distribution of the security.



1 (4) Each natural person purchaser, including a corporation,
2 partnership, or other organization specifically formed by natural
3 persons for the purpose of acquiring the securities offered by the
4 issuer, receives, at least five business days before securities are
5 sold to, or a commitment to purchase is accepted from, the
6 purchaser, a written offering disclosure statement that shall meet
7 the disclosure requirements of Regulation D (17 C.F.R. 230.501
8 et seq.), and any other information as may be prescribed by rule of
9 the commissioner, provided that the issuer shall not be obligated
10 pursuant to this paragraph to provide this disclosure statement to
11 a natural person qualified under Section 260.102.13 of Title 10 of
12 the California Code of Regulations. The offer or sale of securities
13 pursuant to a disclosure statement required by this paragraph that
14 is in violation of Section 25401, or that fails to meet the disclosure
15 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall not
16 render unavailable to the issuer the claim of an exemption from
17 Section 25110 afforded by this subdivision. This paragraph does
18 not impose, directly or indirectly, any additional disclosure
19 obligation with respect to any other exemption from qualification
20 available under any other provision of this section.

21 (5) (A) A general announcement of proposed offering may be
22 published by written document only, provided that the general
23 announcement of proposed offering sets forth the following
24 required information:

- 25 (i) The name of the issuer of the securities.
- 26 (ii) The full title of the security to be issued.
- 27 (iii) The anticipated suitability standards for prospective
28 purchasers.
- 29 (iv) A statement that (I) no money or other consideration is
30 being solicited or will be accepted, (II) an indication of interest
31 made by a prospective purchaser involves no obligation or
32 commitment of any kind, and, if the issuer is required by paragraph
33 (4) to deliver a disclosure statement to prospective purchasers,
34 (III) no sales will be made or commitment to purchase accepted
35 until five business days after delivery of a disclosure statement and
36 subscription information to the prospective purchaser in
37 accordance with the requirements of this subdivision.
- 38 (v) Any other information required by rule of the
39 commissioner.

1 (vi) The following legend: “For more complete information
2 about (Name of Issuer) and (Full Title of Security), send for
3 additional information from (Name and Address) by sending this
4 coupon or calling (Telephone Number).”

5 (B) The general announcement of proposed offering referred to
6 in subparagraph (A) may also set forth the following information:

7 (i) A brief description of the business of the issuer.

8 (ii) The geographic location of the issuer and its business.

9 (iii) The price of the security to be issued, or, if the price is not
10 known, the method of its determination or the probable price range
11 as specified by the issuer, and the aggregate offering price.

12 (C) The general announcement of proposed offering shall
13 contain only the information that is set forth in this paragraph.

14 (D) Dissemination of the general announcement of proposed
15 offering to persons who are not qualified purchasers, without
16 more, shall not disqualify the issuer from claiming the exemption
17 under this subdivision.

18 (6) No telephone solicitation shall be permitted until the issuer
19 has determined that the prospective purchaser to be solicited is a
20 qualified purchaser.

21 (7) The issuer files a notice of transaction under this
22 subdivision both (A) concurrent with the publication of a general
23 announcement of proposed offering or at the time of the initial
24 offer of the securities, whichever occurs first, accompanied by a
25 filing fee, and (B) within 10 business days following the close or
26 abandonment of the offering, but in no case more than 210 days
27 from the date of filing the first notice. The first notice of
28 transaction under subparagraph (A) shall contain an undertaking,
29 in a form acceptable to the commissioner, to deliver any disclosure
30 statement required by paragraph (4) to be delivered to prospective
31 purchasers, and any supplement thereto, to the commissioner
32 within 10 days of the commissioner’s request for the information.
33 The exemption from qualification afforded by this subdivision is
34 unavailable if an issuer fails to file the first notice required under
35 subparagraph (A) or to pay the filing fee. The commissioner has
36 the authority to assess an administrative penalty of up to one
37 thousand dollars (\$1,000) against an issuer that fails to deliver the
38 disclosure statement required to be delivered to the commissioner
39 upon the commissioner’s request within the time period set forth
40 above. Neither the filing of the disclosure statement nor the failure

by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(o) An offer or sale of any security issued by a corporation or limited liability company pursuant to a purchase plan or agreement, or issued pursuant to an option plan or agreement, where the security at the time of issuance or grant is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section, provided that (1) the terms of any purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner no later than 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608. The failure to file the notice of transaction within the time specified in this subdivision shall not affect the availability of this exemption. An issuer that fails to file the notice shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay the commissioner a fee equal to the maximum aggregate fee payable had the transaction been qualified under Section 25110.

Offers and sales exempt pursuant to this subdivision shall be deemed to be part of a single, discrete offering and are not subject to integration with any other offering or sale, whether qualified under Chapter 2 (commencing with Section 25110), or otherwise exempt, or not subject to qualification.

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 (commencing with Section 28000) of Title 4). All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by



1 rule or order of the commissioner restricting transfer of the
2 securities in the manner as the rule or order provides.

3 (q) Any offer or sale of any viatical or life settlement contract
4 or fractionalized or pooled interest therein in a transaction that
5 meets all of the following criteria:

6 (1) Sales of securities described in this subdivision are made
7 only to qualified purchasers or other persons the issuer reasonably
8 believes, after reasonable inquiry, to be qualified purchasers. A
9 corporation, partnership, or other organization specifically formed
10 for the purpose of acquiring the securities offered by the issuer in
11 reliance upon this exemption may be a qualified purchaser only if
12 each of the equity owners of the corporation, partnership, or other
13 organization is a qualified purchaser. Qualified purchasers include
14 the following:

15 (A) A person designated in Section 260.102.13 of Title 10 of
16 the California Code of Regulations.

17 (B) A person designated in subdivision (i) or any rule of the
18 commissioner adopted thereunder.

19 (C) A pension or profit-sharing trust of the issuer, a
20 self-employed individual retirement plan, or an individual
21 retirement account, if the investment decisions made on behalf of
22 the trust, plan, or account are made solely by persons who are
23 qualified purchasers.

24 (D) An organization described in Section 501(c)(3) of the
25 Internal Revenue Code, corporation, Massachusetts or similar
26 business trust, or partnership, each with total assets in excess of
27 five million dollars (\$5,000,000) according to its most recent
28 audited financial statements.

29 (E) A natural person who, either individually or jointly with the
30 person's spouse, (i) has a minimum net worth of one hundred fifty
31 thousand dollars (\$150,000) and had, during the immediately
32 preceding tax year, gross income in excess of one hundred
33 thousand dollars (\$100,000) and reasonably expects gross income
34 in excess of one hundred thousand dollars (\$100,000) during the
35 current tax year or (ii) has a minimum net worth of two hundred
36 fifty thousand dollars (\$250,000). "Net worth" shall be
37 determined exclusive of home, home furnishings, and
38 automobiles. Other assets included in the computation of net worth
39 may be valued at fair market value.

1 Each natural person specified above, by reason of his or her
2 business or financial experience, or the business or financial
3 experience of his or her professional adviser, who is unaffiliated
4 with and who is not compensated, directly or indirectly, by the
5 issuer or any affiliate or selling agent of the issuer, can be
6 reasonably assumed to have the capacity to protect his or her
7 interests in connection with the transaction.

8 The amount of the investment of each natural person shall not
9 exceed 10 percent of the net worth, as determined by this
10 subdivision, of that natural person.

11 (F) Any other purchaser designated as qualified by rule of the
12 commissioner.

13 (2) Each purchaser represents that the purchaser is purchasing
14 for the purchaser's own account (or trust account, if the purchaser
15 is a trustee) and not with a view to or for sale in connection with
16 a distribution of the security.

17 (3) Each natural person purchaser, including a corporation,
18 partnership, or other organization specifically formed by natural
19 persons for the purpose of acquiring the securities offered by the
20 issuer, receives, at least five business days before securities
21 described in this subdivision are sold to, or a commitment to
22 purchase is accepted from, the purchaser, the following
23 information in writing:

24 (A) The name, principal business and mailing address, and
25 telephone number of the issuer.

26 (B) The suitability standards for prospective purchasers as set
27 forth in paragraph (1) of this subdivision.

28 (C) A description of the issuer's type of business organization
29 and the state in which the issuer is organized or incorporated.

30 (D) A brief description of the business of the issuer.

31 (E) If the issuer retains ownership or becomes the beneficiary
32 of the insurance policy, an audit report of an independent certified
33 public accountant together with a balance sheet and related
34 statements of income, retained earnings, and cashflows that reflect
35 the issuer's financial position, the results of the issuer's operations,
36 and the issuer's cashflows as of a date within 15 months before the
37 date of the initial issuance of the securities described in this
38 subdivision. The financial statements listed in this subparagraph
39 shall be prepared in conformity with generally accepted
40 accounting principles. If the date of the audit report is more than

1 120 days before the date of the initial issuance of the securities
2 described in this subdivision, the issuer shall provide unaudited
3 interim financial statements.

4 (F) The names of all directors, officers, partners, members, or
5 trustees of the issuer.

6 (G) A description of any order, judgment, or decree that is final
7 as to the issuing entity of any state, federal, or foreign country
8 governmental agency or administrator, or of any state, federal or
9 foreign country court of competent jurisdiction (i) revoking,
10 suspending, denying, or censuring for cause any license, permit,
11 or other authority of the issuer or of any director, officer, partner,
12 member, trustee, or person owning or controlling, directly or
13 indirectly, 10 percent or more of the outstanding interest or equity
14 securities of the issuer, to engage in the securities, commodities,
15 franchise, insurance, real estate, or lending business or in the offer
16 or sale of securities, commodities, franchises, insurance, real
17 estate, or loans, (ii) permanently restraining, enjoining, barring,
18 suspending, or censuring any such person from engaging in or
19 continuing any conduct, practice, or employment in connection
20 with the offer or sale of securities, commodities, franchises,
21 insurance, real estate, or loans, (iii) convicting any such person of,
22 or pleading nolo contendere by any such person to, any felony or
23 misdemeanor involving a security, commodity, franchise,
24 insurance, real estate, or loan, or any aspect of the securities,
25 commodities, franchise, insurance, real estate, or lending
26 business, or involving dishonesty, fraud, deceit, embezzlement,
27 fraudulent conversion, or misappropriation of property, or (iv)
28 holding any such person liable in a civil action involving breach
29 of a fiduciary duty, fraud, deceit, embezzlement, fraudulent
30 conversion, or misappropriation of property. This subparagraph
31 does not apply to any order, judgment, or decree that has been
32 vacated, overturned, or is more than 10 years old.

33 (H) Notice of the purchaser's right to rescind or cancel the
34 investment and receive a refund pursuant to Section 25508.5.

35 (I) The name, address, and telephone number of the issuing
36 insurance company, and the name, address, and telephone number
37 of the state or foreign country regulator of the insurance company.

38 (J) The total face value of the insurance policy and the
39 percentage of the insurance policy the purchaser will own.

40 (K) The insurance policy number, issue date, and type.

1 (L) If a group insurance policy, the name, address, and
2 telephone number of the group, and, if applicable, the material
3 terms and conditions of converting the policy to an individual
4 policy, including the amount of increased premiums.

5 (M) If a term insurance policy, the term and the name, address,
6 and telephone number of the person who will be responsible for
7 renewing the policy if necessary.

8 (N) That the insurance policy is beyond the state statute for
9 contestability and the reason therefor.

10 (O) The insurance policy premiums and terms of premium
11 payments.

12 (P) The amount of the purchaser's moneys that will be set aside
13 to pay premiums.

14 (Q) The name, address, and telephone number of the person
15 who will be the insurance policy owner and the person who will
16 be responsible for paying premiums.

17 (R) The date on which the purchaser will be required to pay
18 premiums and the amount of the premium, if known.

19 (S) A statement to the effect that any projected rate of return to
20 the purchaser from the purchase of a viatical or life settlement
21 contract or a fractionalized or pooled interest therein is based on
22 an estimated life expectancy for the person insured under the life
23 insurance policy; that the return on the purchase may vary
24 substantially from the expected rate of return based upon the actual
25 life expectancy of the insured that may be less than, equal to, or
26 may greatly exceed the estimated life expectancy; and that the rate
27 of return would be higher if the actual life expectancy were less
28 than, and lower if the actual life expectancy were greater than the
29 estimated life expectancy of the insured at the time the viatical or
30 life settlement contract was closed.

31 (T) A statement that the purchaser should consult with his or
32 her tax adviser regarding the tax consequences of the purchase of
33 the viatical or life settlement contract or fractionalized or pooled
34 interest therein and, if the purchaser is using retirement funds or
35 accounts for that purchase, whether or not any adverse tax
36 consequences might result from the use of those funds for the
37 purchase of that investment.

38 (U) Any other information as may be prescribed by rule of the
39 commissioner.

SEC. 2. Section 25212 of the Corporations Code is amended to read:

25212. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, suspend for a period not exceeding 12 months or revoke the certificate of, any broker-dealer if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the broker-dealer, whether prior or subsequent to becoming a broker-dealer, or any partner, officer, director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer, or any person directly or indirectly controlling the broker-dealer, whether prior or subsequent to becoming such, or any agent employed by the broker-dealer while so employed has done any of the following:

(a) Has willfully made or caused to be made in any application for a certificate or in any report required to be filed with the commissioner under this law, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

(b) Has been either (1) convicted of or has pled nolo contendere to a felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the felony, misdemeanor, or civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D) involved the violation of Section 1341, 1342, or 1343 of Title 18 of the United States Code.

(c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, or broker-dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with that activity or in connection with the purchase or sale of any security.

(d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other

1 state denying registration to, or revoking or suspending the
2 registration of, the person as a broker, dealer, agent, or investment
3 adviser, (2) any order of any national securities association or
4 national securities exchange (registered under the Securities
5 Exchange Act of 1934) suspending or expelling that person from
6 membership in the association or exchange or from association
7 with any member thereof, or (3) any other order of the commission
8 or any administrator, association, or exchange referred to in this
9 subdivision which is or has been necessary for the protection of
10 any investor.

11 (e) Has willfully violated any provision of the Securities Act of
12 1933, the Securities Exchange Act of 1934, the Investment
13 Advisers Act of 1940, the Investment Company Act of 1940, the
14 Commodity Exchange Act, or Title 4 (commencing with Section
15 25000), including the Franchise Investment Law, Division 5
16 (commencing with Section 31000), or the California Commodity
17 Law of 1990, Division 4.5 (commencing with Section 29500), or
18 of any rule or regulation under any of those statutes, or any order
19 of the commissioner which is or has been necessary for the
20 protection of any investor.

21 (f) Is or has been subject to (1) any order of the Commodity
22 Futures Trading Commission denying registration to, or revoking
23 or suspending the registration of, that person under the
24 Commodity Exchange Act, (2) any order of any board of trade or
25 commodity exchange, including, but not limited to, the New York
26 Mercantile Exchange, the Chicago Mercantile Exchange, the
27 Chicago Board of Trade, or the Chicago Board Options Exchange,
28 suspending or expelling that person from membership in the board
29 of trade or commodity exchange or from association with any
30 member thereof, or (3) any other order of the commission or any
31 board or exchange referred to in this subdivision which is or has
32 been necessary for the protection of any investor.

33 (g) Has willfully aided, abetted, counseled, commanded,
34 induced, or procured the violation by any other person of any of
35 the statutes or rules or regulations referred to in subdivision (e)
36 above, or has failed reasonably to supervise, with a view to
37 preventing violations of those statutes, rules and regulations,
38 another person who commits a violation, if the other person is
39 subject to his or her supervision; for the purposes of this
40 subdivision, no person shall be deemed to have failed reasonably



1 to supervise any person if (1) there have been established
2 procedures, and a system for applying those procedures, which
3 would reasonably be expected to prevent and detect, insofar as
4 practicable, any violation by the other person, and (2) that person
5 has reasonably discharged the duties and obligations incumbent
6 upon him or her by reason of those procedures and system without
7 reasonable cause to believe that those procedures and system were
8 not being complied with.

9 (h) Is subject to any currently effective order of the
10 commissioner entered pursuant to Section 25213 revoking or
11 suspending the certificate of the person as an agent.

12 (i) Has violated any provision of this division or the rules
13 thereunder or, in the case of an applicant only, any similar
14 regulatory scheme of the State of California or a foreign
15 jurisdiction.

16 SEC. 3. Section 25230 of the Corporations Code is amended
17 to read:

18 25230. (a) It is unlawful for any investment adviser to
19 conduct business as an investment adviser in this state unless the
20 investment adviser has first applied for and secured from the
21 commissioner a certificate, then in effect, authorizing the
22 investment adviser to do so or unless the investment adviser is
23 exempted by the provisions of Chapter 1 (commencing with
24 Section 25200) of this part or unless the investment adviser is
25 subject to Section 25230.1.

26 (b) No person, on behalf of an investment adviser that has
27 obtained a certificate pursuant to Section 25231, may, in this state:
28 offer or negotiate for the sale of investment advisory services of
29 the investment adviser; determine which recommendations shall
30 be made to, make recommendations to, or manage the accounts of,
31 clients of the investment adviser; or determine the reports or
32 analyses concerning securities to be published by the investment
33 adviser, unless the investment adviser and that person have
34 complied with rules that the commissioner may adopt for the
35 qualification and employment of those persons.

36 (c) The commissioner may, consistent with Section 25232.1,
37 review the disciplinary history of an investment adviser
38 representative upon the filing of notice of any of the following:

39 (1) The employment, association, or transfer of the investment
40 adviser representative.

1 (2) An amendment to the information filed by the investment
2 adviser representative at the time of employment, association, or
3 transfer.

4 (3) The termination of employment or association of the
5 investment adviser representative.

6 SEC. 4. Section 25232 of the Corporations Code is amended
7 to read:

8 25232. The commissioner may, after appropriate notice and
9 opportunity for hearing, by order censure, deny a certificate to, or
10 suspend for a period not exceeding 12 months or revoke the
11 certificate of, an investment adviser, if the commissioner finds that
12 the censure, denial, suspension, or revocation is in the public
13 interest and that the investment adviser, whether prior or
14 subsequent to becoming such, or any partner, officer or director
15 thereof or any person performing similar functions or any person
16 directly or indirectly controlling the investment adviser, whether
17 prior or subsequent to becoming such, or any employee of the
18 investment adviser while so employed has done any of the
19 following:

20 (a) Has willfully made or caused to be made in any application
21 for a certificate or any report filed with the commissioner under
22 this division, or in any proceeding before the commissioner, any
23 statement which was at the time and in the light of the
24 circumstances under which it was made false or misleading with
25 respect to any material fact, or has willfully omitted to state in the
26 application or report any material fact which is required to be
27 stated therein.

28 (b) Has been either (1) convicted of or has pled nolo contendere
29 to any felony or misdemeanor, or (2) held liable in a civil action
30 by final judgment of a court based upon conduct showing moral
31 turpitude, and the commissioner finds that the felony,
32 misdemeanor or civil action (A) involved the purchase or sale of
33 any security, (B) arose out of the conduct of the business of a
34 broker-dealer or investment adviser, (C) involved theft, or (D)
35 involved the violation of Section 1341, 1342, or 1343 of Title 18
36 of the United States Code.

37 (c) Is permanently or temporarily enjoined by order, judgment,
38 or decree of any court of competent jurisdiction from acting as an
39 investment adviser, underwriter or broker-dealer or as an affiliated
40 person or employee of any investment company, bank, or

1 insurance company, or from engaging in or continuing any
2 conduct or practice in connection with that activity, or in
3 connection with the purchase or sale of any security.

4 (d) Is or has been subject to (1) any order of the Securities and
5 Exchange Commission or the securities administrator of any other
6 state denying or revoking or suspending his or her registration as
7 an investment adviser, or investment adviser representative, or as
8 a broker or dealer or agent, (2) any order of any national securities
9 association or national securities exchange (registered under the
10 Securities Exchange Act of 1934) suspending or expelling him or
11 her from membership in that association or exchange or from
12 association with any member thereof, or (3) any other order of the
13 commission or any administrator, association, or exchange
14 referred to in this subdivision which is or has been necessary for
15 the protection of any investor.

16 (e) Has willfully violated any provision of the Securities Act of
17 1933, the Securities Exchange Act of 1934, the Investment
18 Advisers Act of 1940, the Investment Company Act of 1940, the
19 Commodity Exchange Act, or Title 4 (commencing with Section
20 25000), including the Franchise Investment Law, Division 5
21 (commencing with Section 31000), or the California Commodity
22 Law of 1990, Division 4.5 (commencing with Section 29500), or
23 of any rule or regulation under any of those statutes, or any order
24 of the commissioner which is or has been necessary for the
25 protection of any investor.

26 (f) Is or has been subject to (1) any order of the Commodity
27 Futures Trading Commission denying registration to, or revoking
28 or suspending the registration of, that person under the
29 Commodity Exchange Act, (2) any order of any board of trade or
30 commodity exchange, including, but not limited to, the New York
31 Mercantile Exchange, the Chicago Mercantile Exchange, the
32 Chicago Board of Trade, or the Chicago Board Options Exchange,
33 suspending or expelling that person from membership in the board
34 of trade or commodity exchange or from association with any
35 member thereof, or (3) any other order of the commission or any
36 board or exchange referred to in this subdivision which is or has
37 been necessary for the protection of any investor.

38 (g) Has aided, abetted, counseled, commanded, induced, or
39 procured the violation by any other person of any statute or rule or
40 regulation referred to in subdivision (e).



1 (h) Has violated any provision of this division or the rules
2 thereunder or any similar regulatory scheme of the State of
3 California or, in the case of an applicant only, a foreign
4 jurisdiction.

5 SEC. 5. Section 25241 of the Corporations Code is amended
6 to read:

7 25241. (a) Every broker-dealer and every investment adviser
8 licensed under Section 25230 shall make and keep accounts,
9 correspondence, memorandums, papers, books, and other records
10 and shall file financial and other reports as the commissioner by
11 rule requires, subject to the limitations of Section 15(h) of the
12 Securities Exchange Act of 1934 with respect to broker-dealers
13 and Section 222 of the Investment Advisers Act of 1940 with
14 respect to investment advisers.

15 (b) All records so required shall be preserved for the time
16 specified in the rule.

17 (c) All records referred to in this section are subject at any time
18 and from time to time to reasonable periodic, special, or other
19 examinations by the commissioner, within or without this state, as
20 the commissioner deems necessary or appropriate in the public
21 interest or for the protection of investors.

22 (d) For the purpose of avoiding unnecessary duplications of
23 examinations, the commissioner, insofar as he or she deems it
24 practicable in administering this section, may cooperate with the
25 securities administrators of other states, the Securities and
26 Exchange Commission and any national securities exchange or
27 national securities association.

28 (e) Unless otherwise provided by rule, every investment
29 adviser subject to Section 25230 and every broker-dealer,
30 including an applicant for a license under Section 25210 or 25230,
31 shall furnish an authorization for disclosure to the commissioner
32 of financial records of the licensee's broker-dealer or investment
33 adviser business pursuant to Section 7473 of the Government
34 Code.

35 SEC. 6. Section 25247 of the Corporations Code is amended
36 to read:

37 25247. (a) Upon written or oral request, the commissioner
38 shall make available to any person the information specified in
39 Section 6254.12 of the Government Code with respect to any
40 broker-dealer or agent licensed or regulated under this part. The

1 commissioner shall also make available the current license status
2 and the year of issuance of the license of a broker-dealer. Any
3 information disclosed pursuant to this subdivision shall constitute
4 a public record. Notwithstanding any other provisions of law, the
5 commissioner may disclose either orally or in writing that
6 information pursuant to this subdivision. There shall be no liability
7 on the part of and no cause of action of any nature shall arise
8 against the State of California, the Department of Corporations,
9 the Commissioner of Corporations, or any officer, agent, or
10 employee of the state or of the Department of Corporations for the
11 release of any false or unauthorized information, unless the release
12 of that information was done with knowledge and malice.

13 (b) Any broker-dealer or agent licensed or regulated under this
14 part shall upon request deliver a written notice to any client when
15 a new account is opened stating that information about the license
16 status or disciplinary record of a broker-dealer or an agent may be
17 obtained from the Department of Corporations, or from any other
18 source that provides substantially similar information.

19 (c) The notice provided under subdivision (b) shall contain the
20 office location or telephone number where the information may be
21 obtained.

22 (d) A broker-dealer or agent shall be exempt from providing
23 the notice required under subdivision (b) if a person who does not
24 have a financial relationship with the broker-dealer or agent,
25 requests only general operational information such as the nature
26 of the broker-dealer's or agent's business, office location, hours of
27 operation, basic services, and fees, but does not solicit advice
28 regarding investments or other services offered.

29 (e) Upon written or oral request, the commissioner shall make
30 available to any person the information filed with the Investment
31 Adviser Registration Depository with respect to any investment
32 adviser, investment adviser representative, or associated person of
33 an investment adviser licensed or regulated under this part. The
34 commissioner shall also make available the current license status
35 and the year of issuance of the license of an investment adviser.
36 Any information disclosed pursuant to this subdivision shall
37 constitute a public record. Notwithstanding any other provision of
38 law, the commissioner may disclose that information either orally
39 or in writing pursuant to this subdivision. There shall be no
40 liability on the part of and no cause of action of any nature shall



1 arise against the State of California, the Department of
2 Corporations, the Commissioner of Corporations, or any officer,
3 agent, or employee of the state or of the Department of
4 Corporations for the release of any false or unauthorized
5 information, unless the release of that information was done with
6 knowledge and malice.

7 (f) Section 461 of the Business and Professions Code shall not
8 be applicable to the Department of Corporations when using a
9 national, uniform application adopted or approved for use by the
10 Securities and Exchange Commission, the North American
11 Securities Administrators Association, or the National
12 Association of Securities Dealers Regulation, Inc. that is required
13 for participation in the Central Registration Depository or the
14 Investment Adviser Registration Depository.

15 (g) This section shall not require the disclosure of criminal
16 history record information maintained by the Federal Bureau of
17 Investigation pursuant to Section 534 of Title 28 of the United
18 States Code, and the rules thereunder, or information not otherwise
19 subject to disclosure under the California Public Records Act or
20 the Information Practices Act of 1977.

21 SEC. 7. Section 25252 of the Corporations Code is amended
22 to read:

23 25252. The commissioner may, after appropriate notice and
24 opportunity for hearing, by orders levy administrative penalties as
25 follows:

26 (a) Any person, whether or not subject to this part, other than
27 a broker-dealer or investment adviser, who willfully violates any
28 provision of this division, or who willfully violates any rule or
29 order adopted or issued pursuant to this division, is liable for
30 administrative penalties of not more than one thousand dollars
31 (\$1,000) for the first violation, and not more than two thousand
32 five hundred dollars (\$2,500) for each subsequent violation.

33 (b) Any broker-dealer or investment adviser that willfully
34 violates any provision of this division to which it is subject, or that
35 willfully violates any rule or order adopted or issued pursuant to
36 this division and to which it is subject, is liable for administrative
37 penalties of not more than five thousand dollars (\$5,000) for the
38 first violation, not more than ten thousand dollars (\$10,000) for the
39 second violation, and not more than fifteen thousand dollars
40 (\$15,000) for each subsequent violation.

1 (c) The administrative penalties shall be collected by the
2 commissioner and paid into the State Corporations Fund.

3 (d) The administrative penalties available to the commissioner
4 pursuant to this section are not exclusive, and may be sought and
5 employed in any combination with civil, criminal, and other
6 administrative remedies deemed advisable by the commissioner to
7 enforce the provisions of this division.

8 SEC. 8. Section 25256 is added to the Corporations Code, to
9 read:

10 25256. (a) For any broker-dealer or investment adviser, a
11 disciplinary action taken by the State of California, another state,
12 an agency of the federal government, or another country for an
13 action substantially related to the activity regulated under this
14 division may be grounds for disciplinary action by the
15 commissioner. A certified copy of the record of the disciplinary
16 action taken against the licensee by the State of California, other
17 state, agency of the federal government, or other country shall be
18 conclusive evidence of the events related therein.

19 (b) Nothing in this section precludes the commissioner from
20 applying a specific statutory provision in this division providing
21 for discipline against a broker-dealer or investment adviser, as a
22 result of disciplinary action taken against a broker-dealer or an
23 investment adviser, by the State of California, another state, an
24 agency of the federal government, or another country.

25 SEC. 9. Section 25404 is added to the Corporations Code, to
26 read:

27 25404. It is unlawful for any person to knowingly alter,
28 destroy, mutilate, conceal, cover up, falsify, or make a false entry
29 in any record, document, or tangible object with the intent to
30 impede, obstruct, or influence the administration or enforcement
31 of this division.

32 SEC. 10. Section 25532 of the Corporations Code is amended
33 to read:

34 25532. (a) If, in the opinion of the commissioner, (1) the sale
35 of a security is subject to qualification under this law and it is being
36 or has been offered or sold without first being qualified, the
37 commissioner may order the issuer or offeror of the security to
38 desist and refrain from the further offer or sale of the security until
39 qualification has been made under this law or (2) the sale of a
40 security is subject to the requirements of Section 25100.1,



1 25101.1, or 25102.1 and the security is being or has been offered
2 or sold without first meeting the requirements of those sections,
3 the commissioner may order the issuer or offeror of that security
4 to desist and refrain from the further offer or sale of the security
5 until those requirements have been met.

6 (b) If, in the opinion of the commissioner, a person has been or
7 is acting as a broker-dealer or investment adviser, or has been or
8 is engaging in broker-dealer or investment adviser activities, in
9 violation of Section 25210, 25230 or 25230.1, the commissioner
10 may order that person to desist and refrain from the activity until
11 the person has been appropriately licensed or the required filing
12 has been made under this law.

13 (c) If, in the opinion of the commissioner, a person has violated
14 or is violating Section 25401, the commissioner may order that
15 person to desist and refrain from the violation.

16 (d) If, after an order has been served under subdivision (a), (b),
17 or (c), a request for hearing is filed in writing within 30 days of the
18 date of service of the order by the person to whom the order was
19 directed, a hearing shall be held in accordance with provisions of
20 the Administrative Procedure Act, Chapter 5 (commencing with
21 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
22 Code, and the commissioner shall have all of the powers granted
23 under that chapter. Unless the hearing is commenced within 15
24 business days after the request is filed (or the person affected
25 consents to a later date), the order is rescinded.

26 If that person fails to file a written request for a hearing within
27 one year from the date of service of the order, the order shall be
28 deemed a final order of the commissioner and is not subject to
29 review by any court or agency, notwithstanding Section 25609.

30 SEC. 11. Section 25540 of the Corporations Code is amended
31 to read:

32 25540. (a) Except as provided for in subdivision (b), any
33 person who willfully violates any provision of this division, or
34 who willfully violates any rule or order under this division, shall
35 upon conviction be fined not more than one million dollars
36 (\$1,000,000), or imprisoned in the state prison, or in a county jail
37 for not more than one year, or be punished by both that fine and
38 imprisonment; but no person may be imprisoned for the violation
39 of any rule or order if he or she proves that he or she had no
40 knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, or 25402, or who willfully violates any rule or order under this division adopted pursuant to those provisions, shall upon conviction be fined not more than ten million dollars (\$10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

(c) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), who willfully violates Section 25400, 25401, or 25402, or who willfully violates any rule or order under this division adopted pursuant to those provisions, shall upon conviction be fined not more than twenty-five million dollars (\$25,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

SEC. 12. Section 25541 of the Corporations Code is amended to read:

25541. (a) Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer, purchase, or sale of any security or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any security shall upon conviction be fined not more than ten million dollars (\$10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

(b) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), who willfully violates subdivision (a) shall upon conviction be fined not more than twenty-five million dollars (\$25,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both that fine and imprisonment.

SEC. 13. Section 25612.3 is added to the Corporations Code, to read:

25612.3. Unless otherwise provided by rule, the commissioner shall require the use of the following forms:

(a) Form BD (Uniform Application for Broker-Dealer Registration) for a broker-dealer application.

(b) Form ADV (Uniform Application for Investment Adviser Registration) for an investment adviser application.

(c) Form BDW (Uniform Request for Broker-Dealer Withdrawal) for withdrawing from licensure as a broker-dealer.

(d) Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) for withdrawing from licensure as an investment adviser.

(e) Form U-4 (Uniform Application for Securities Industry Registration or Transfer) for the reporting of an agent of a broker-dealer or an investment adviser representative or associated person of an investment adviser.

(f) Form U-5 (Uniform Termination Notice for Securities Industry Registration) for the reporting of the termination of an agent of a broker-dealer or an investment adviser representative or associated person of an investment adviser.

SEC. 14. Section 25612.5 of the Corporations Code is amended to read:

25612.5. (a) To encourage uniform interpretation and administration of this law and the Franchise Investment Law (Division 5 (commencing with Section 31000)) and effective securities and franchise regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization or securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subdivision (a) includes, but is not limited to, the following actions:

(1) Prescribing rules and forms with a view to achieving maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Participating in a nationwide central depository for qualification or registration of securities under this law and for documents or records required or allowed to be maintained under this law.

(3) Participating in the Central Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of broker-dealers or agents, or both.

(4) Participating in the Investment Adviser Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of investment advisers or investment adviser representatives, or both.

(5) Cooperating in any regulatory activity necessary in the administration of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act).

(c) Notwithstanding any other provision of law, any application for qualification, amendment to the application or related securities qualification or registration document or notice under Sections 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and 25230.1 or record otherwise required to be signed that is filed in this state as an electronic record pursuant to a nationwide central depository for qualification or registration of securities, or any electronic record filed through the Central Registration Depository or the Investment Adviser Registration Depository, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

(d) For purposes of this section, “electronic record” has the same meaning as in subdivision (g) of Section 1633.2 of the Civil Code.

SEC. 15. Section 12221 of the Financial Code is amended to read:

12221. Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for the license for any of the following reasons:

(a) A false statement of a material fact has been made in the application for license.

(b) Any officer, director, or member of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(c) The applicant, any officer, director, general partner, or member of the applicant, or any person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any

1 provision of this division or the rules thereunder or any similar
2 regulatory scheme of the State of California or a foreign
3 jurisdiction.

4 (d) The applicant has not complied with all the applicable
5 provisions of this division.

6 (e) The proposed officers and directors do not have sufficient
7 check selling, bill paying, prorating, or other experience to afford
8 reasonable promise of successful operation.

9 (f) The plan of business does not demonstrate that the proposed
10 business will have a reasonable chance for a successful operation.

11 (g) The proposed business is being formed for a purpose other
12 than the legitimate objectives contemplated by this division.

13 (h) The proposed capital structure is inadequate.

14 SEC. 16. Section 12307.5 is added to the Financial Code, to
15 read:

16 12307.5. (a) For any licensee, a disciplinary action taken by
17 the State of California, another state, an agency of the federal
18 government, or another country for an action substantially related
19 to the activity regulated under this division may be grounds for
20 disciplinary action by the commissioner. A certified copy of the
21 record of the disciplinary action taken against the licensee by the
22 State of California, other state, agency of the federal government,
23 or other country shall be conclusive evidence of the events related
24 therein.

25 (b) Nothing in this section shall preclude the commissioner
26 from applying a specific statutory provision in this division
27 providing for discipline against a licensee as a result of
28 disciplinary action taken against a licensee by the State of
29 California, another state, an agency of the federal government, or
30 another country.

31 SEC. 17. Section 17209.3 of the Financial Code is amended
32 to read:

33 17209.3. The commissioner may refuse to issue any license
34 being applied for, and shall refuse to issue any license being
35 applied for if upon the commissioner's examination and
36 investigation, and after appropriate hearing, the commissioner
37 finds any of the following:

38 (a) That the corporation is to be formed for any business other
39 than legitimate escrow agent services, or proposes to use a name



1 that is misleading or in conflict with the name of an existing
2 licensee.

3 (b) That any incorporator, officer, or director of the applicant
4 has, within the last 10 years, been (1) convicted of or pleaded nolo
5 contendere to a crime, or (2) committed any act involving
6 dishonesty, fraud, or deceit, which crime or act is substantially
7 related to the qualifications, functions, or duties of a person
8 engaged in business in accordance with the provisions of this
9 division.

10 (c) That there is no officer or manager possessing a minimum
11 of five years of responsible escrow or joint control experience
12 stationed or to be stationed at the main office of the corporation and
13 that there is no officer, manager or employee possessing a
14 minimum of four years of responsible escrow or joint control
15 experience stationed or to be stationed at each branch.

16 (d) That the proposed licensee's financial program is unsound.

17 (e) A false statement of a material fact has been made in the
18 application for license.

19 (f) The applicant, any officer, director, general partner, or
20 incorporator of the applicant, or any person owning or controlling,
21 directly or indirectly, 10 percent or more of the outstanding equity
22 securities of the applicant has violated any provision of this
23 division or the rules thereunder or any similar regulatory scheme
24 of the State of California or a foreign jurisdiction.

25 SEC. 18. *Section 17209.3 of the Financial Code is amended*
26 *to read:*

27 17209.3. The commissioner may refuse to issue any license
28 being applied for, and shall refuse to issue any license being
29 applied for if upon ~~his~~ *the commissioner's* examination and
30 investigation, and after appropriate hearing, ~~he~~ *the commissioner*
31 finds any of the following:

32 (a) That the corporation is to be formed for any business other
33 than legitimate escrow agent services, or proposes to use a name
34 that is misleading or in conflict with the name of an existing
35 licensee.

36 (b) That any incorporator, officer, or director of the applicant
37 has, within the last 10 years, been (1) convicted of or pleaded nolo
38 contendere to a crime, or (2) committed any act involving
39 dishonesty, fraud, or deceit, which crime or act is substantially
40 related to the qualifications, functions, or duties of a person

engaged in business in accordance with the provisions of this division.

(c) That there is no officer or manager possessing a minimum of five years of responsible escrow or joint control experience stationed or to be stationed at the main office of the corporation and that there is no officer, manager or employee possessing a minimum of four years of responsible escrow or joint control experience stationed or to be stationed at each branch.

(d) That the proposed licensee's financial program is unsound.

(e) A false statement of a material fact has been made in the application for license.

(f) The applicant ~~or~~, any officer, director, *general partner*, or incorporator of the applicant, *or any person owing or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities of the applicant* has violated any provision of this division or the rules thereunder or any similar regulatory scheme of *the State of California* or a foreign jurisdiction.

(g) *The applicant has failed to comply with the Fidelity Corporation's membership requirements set forth in subdivision (b) of Section 17312, in subdivision (a) of Section 17320, and in Sections 17331 and 17331.1.*

SEC. 19. Section 17424 is added to the Financial Code, to read:

17424. (a) For any licensee, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

~~SEC. 19.~~

1 *SEC. 20.* Section 22109 of the Financial Code is amended to
2 read:

3 22109. (a) Upon reasonable notice and opportunity to be
4 heard, the commissioner may deny the application for any of the
5 following reasons:

6 (1) A false statement of a material fact has been made in the
7 application.

8 (2) Any officer, director, general partner, or person owning or
9 controlling, directly or indirectly, 10 percent or more of the
10 outstanding interests or equity securities of the applicant has,
11 within the last 10 years (A) been convicted of or pleaded nolo
12 contendere to a crime, or (B) committed any act involving
13 dishonesty, fraud, or deceit, if the crime or act is substantially
14 related to the qualifications, functions, or duties of a person
15 engaged in business in accordance with this division.

16 (3) The applicant or any officer, director, general partner, or
17 person owning or controlling, directly or indirectly, 10 percent or
18 more of the outstanding interests or equity securities of the
19 applicant has violated any provision of this division or the rules
20 thereunder or any similar regulatory scheme of the State of
21 California or a foreign jurisdiction.

22 (b) The application shall be considered withdrawn within the
23 meaning of this section if the applicant fails to respond to a written
24 notification of a deficiency in the application within 90 days of the
25 date of the notification.

26 (c) The commissioner shall, within 60 days from the filing of
27 a full and complete application for a license with the fees, either
28 issue a license or file a statement of issues prepared in accordance
29 with Chapter 5 (commencing with Section 11500) of Part 1 of
30 Division 3 of Title 2 of the Government Code.

31 ~~*SEC. 20.*~~

32 *SEC. 21.* Section 22705.1 is added to the Financial Code, to
33 read:

34 22705.1. (a) For any licensee, a disciplinary action taken by
35 the State of California, another state, an agency of the federal
36 government, or another country for an action substantially related
37 to the activity regulated under this division may be grounds for
38 disciplinary action by the commissioner. A certified copy of the
39 record of the disciplinary action taken against the licensee by the
40 State of California, other state, agency of the federal government,

1 or other country shall be conclusive evidence of the events related
2 therein.

3 (b) Nothing in this section shall preclude the commissioner
4 from applying a specific statutory provision in this division
5 providing for discipline against a licensee as a result of
6 disciplinary action taken against a licensee by the State of
7 California, another state, an agency of the federal government, or
8 another country.

9 ~~SEC. 21.~~

10 *SEC. 22.* Section 23001 of the Financial Code is amended to
11 read:

12 23001. As used in this division, the following terms have the
13 following meanings:

14 (a) “Deferred deposit transaction” means a transaction
15 whereby a person defers depositing a customer’s personal check
16 until a specific date, pursuant to a written agreement, as provided
17 in Section 23035.

18 (b) “Commissioner” means the Commissioner of
19 Corporations.

20 (c) “Department” means the Department of Corporations.

21 (d) “Licensee” means any person who offers, originates, or
22 makes a deferred deposit transaction, who arranges a deferred
23 deposit transaction for a deferred deposit originator, who acts as
24 an agent for a deferred deposit originator, or who assists a deferred
25 deposit originator in the origination of a deferred deposit
26 transaction. However, “licensee” does not include a state or
27 federally chartered bank, thrift, savings association, industrial
28 loan company, or credit union. “Licensee” also does not include
29 a retail seller engaged primarily in the business of selling
30 consumer goods, including consumables, to retail buyers that
31 cashes checks or issues money orders for a minimum fee not
32 exceeding two dollars (\$2) as a service to its customers that is
33 incidental to its main purpose or business. “Licensee” also does
34 not include an employee regularly employed by a licensee at the
35 licensee’s place of business. An employee, when acting under the
36 scope of the employee’s employment, shall be exempt from any
37 other law from which the employee’s employer is exempt.

38 (e) “Person” means an individual, a corporation, a partnership,
39 a limited liability company, a joint venture, an association, a joint
40 stock company, a trust, an unincorporated organization, a

1 government entity, or a political subdivision of a government
2 entity.

3 (f) “Deferred deposit originator” means a person who offers,
4 originates, or makes a deferred deposit transaction.

5 ~~SEC. 22.~~

6 *SEC. 23. Section 18 of this bill incorporates amendments to*
7 *Section 17209.3 of the Financial Code proposed by both this bill*
8 *and AB 479. It shall only become operative if (1) both bills are*
9 *enacted and become effective on or before January 1, 2004, (2)*
10 *each bill amends Section 17209.3 of the Financial Code, and (3)*
11 *this bill is enacted after AB 479, in which case Section 17 of this*
12 *bill shall not become operative.*

13 *SEC. 24.* No reimbursement is required by this act pursuant
14 to Section 6 of Article XIII B of the California Constitution
15 because the only costs that may be incurred by a local agency or
16 school district will be incurred because this act creates a new crime
17 or infraction, eliminates a crime or infraction, or changes the
18 penalty for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition of a
20 crime within the meaning of Section 6 of Article XIII B of the
21 California Constitution.

